IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 671 OF 1990

Food Corporation of India,
A Corporation registered under
the Food Corporation Act having
its registered office at
Barkhamba Lane, New Delhi and
Regional Office at Mistry Bhavan,
Dinshaw Watcha Road, Churchgate,
Bombay-400 020. ...Plaintiff.

V/s.

1. Raigad Jillah Krishi Audyogik Sarva Seva Sahakari Sangha Maryadit, a Co-op. society registered under the Maharashtra Co-op. Societies Act 1960 and having its registered office at Opp. Post Office, Alibag, Raigad.

2. D. B. Udan, Liquidator of the defendant No.1, having office C/O. Deputy Director of Registrar, Alibag.

... Defendants.

Mr. R. V. Govilkar for the plaintiff.
None for the defendants.

CORAM : ANOOP V. MOHTA,J.

RESERVED ON : 15th MARCH 2007.

PRONOUNCED ON : 2nd APRIL, 2007.

JUDGMENT :-

The plaintiff, the Food Corporation of India

has filed the present suit for the recovery of damages from defendant No.1, Raigad Zilha Krishi Audyogik Sarva Sahakari Sangh, which is in liquidation. Defendant No.2, Mr. D. B. Udan is a liquidator of defendant No.1.

2. None appears for the defendants though served. The suit has been, therefore, listed as uncontested suit. An affidavit of service is also filed.

3. The plaintiff has filed two affidavits of evidence of its officer's, both dated 26/02/2007. Two lists of compilation of original documents are taken on record, marked Exhibit "A" to "G" (Collectively).

4. As the averments have remained uncontroverted, this is an ex-parte judgment and decree.

5. The plaintiff had invited tenders for sale of sub-standard rice lying at Bombay City Godowns. Defendant No.1 had submitted tender for certain lots and the same were opened on 24/07/1986. The plaintiff accepted the said tender for 10 lots and conveyed the same to defendant No.1 by way of telegram dated 08/09/1986. As defendant No.1 committed a breach of

contract by non-payment of security taxes price, as per the terms and conditions of the contract within stipulated period i.e. 18/09/1986, the plaintiff had proceeded to dispose of the said 10 lots, in view of clause (F) of the terms and conditions of the contract.

6. The plaintiff, therefore, invited fresh tenders repeatedly. As plaintiffs have suffered loss at different stages, by a letter dated 31/01/1989, called upon defendant No.1 to pay a sum of Rs.4,35,673=55 ps.. As defendant No.1 failed to respond to the same, the plaintiff has filed the present suit on 07/09/1989, which is within limitation.

7. The averments made in the plaint has been supported by the two affidavits filed by the officers of the plaintiff. One Miss Indra Mohandas Tahiliani, who was working as Deputy Manager has deposed that she was aware of the suit transaction. As her deposition remained uncontroverted, she being an author of the documents Exhibit "D" dated 08/09/1986, Exhibit "F" 31/01/1989 the contents of the said documents also stand proved. Exhibit "A","B", "C", "E" and "G" are the documents from the plaintiff’s office. She has

also identified the signature and confirmed the contents of the same being the documents of the plaintiff's record. Therefore, the case as pleaded is also remained uncontroverted and stands proved.

8. One Mr. Golla Prasad, who was working as Deputy General Manager has been authorized to depose on behalf of the plaintiff further supported the averments made in the plaint. The contents of the documents as referred above, has been proved by these officials. Mr. Golla Prasad has also confirmed the contents and the letters and the correspondences, issued by the plaintiffs, in reference to the transaction in question, and as also deposed by Miss Indra Mohan Tahiliani the then senior Regional Manager as referred above. He has identified her signature also.

9. In the result, the plaintiff has proved his case for the purpose of claiming damages in accordance with law.

10. On the foundation of the loss suffered by them as defendant No.1 committed breach of contract, the plaintiffs as already referred above had issued notice

which was duly received by defendant No.1 whereby the demand of Rs.4,35,673=55 ps. has been claimed towards the monetary loss. Exhibit "F" dated 31/01/1989 which was issued by Miss Indra Mohan Tahiliani, refers to the details how the plaintiffs have suffered the losses, the contents of the same also remained uncontroverted.

11. The statement attached to the said demand notice shows the liability of defendant No.1 as arrived at by taking into consideration the actual loss suffered by the plaintiff including expenditure on advertisements, and storage charges and interest on the amount. It also reflects the value of the stocks. Based on the rate quoted by defendant No.1 and the value of the stocks realised in the resale, the liability as arrived is Rs.4,60,673=55 ps. As Rs.25,000/- had been already deposited by defendant No.1, as earnest money vide DD No.1034774 on 24/07/1986. The same has been adjusted. Ultimately the amount claimed is Rs. 4,35,673=55 ps.. The demand notice issued by the plaintiff through the advocate for the same amount remained uncontroverted. The plaintiff has given notice to the Registrar of Co-operative Society, Bombay as contemplated under Section 164 of the Bombay

Co-operative Societies Act.

12. In view of the material placed on record including the affidavit and documentary evidence and as submitted by the learned counsel for the plaintiff the plaintiffs have suffered a loss as mentioned above for no fault of theirs. They have complied with all the formalities and followed the procedures before arriving at the figures of liabilities as referred above, against the defendants.

13. In regard to the interest claimed, considering the facts and circumstances of the case, the reasonable and fair rate of interest will be @ 12% p.a. on the amount of Rs.4,35,673=55 ps. from the date of filing of the suit till the realisation of entire amount of the decree.

14. Taking into consideration all the above facts and circumstances, the suit of the plaintiff is allowed.

15. The defendant is ordered to pay a sum of Rs.4,35,673=55 ps. to the plaintiff with interest @ 12% p.a. from the date of filing of the suit till the realisation of entire amount of the decree as prayed.

16. The decree be drawn accordingly with no order as to costs.

[ANOOP V. MOHTA, J.]